



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: KIN - 174355

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed on May 11, 2016, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Professional Services Group - PSG regarding Kinship Care, a hearing was held on June 7, 2016, by telephone.

The issue for determination is whether the agency correctly discontinued Kinship Care benefits for Petitioner's niece and nephews.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, WI 53703

By: [REDACTED]  
Professional Services Group - PSG  
1126 S 70th Street  
Suite N 200  
West Allis, WI 53214

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She filed this appeal to contest the discontinuance of her Kinship Care benefits.

2. Petitioner is the maternal aunt of [REDACTED] (DOB [REDACTED]), [REDACTED] (DOB [REDACTED]), [REDACTED] (DOB [REDACTED]) and [REDACTED] ([REDACTED]).
3. Petitioner has been a recipient of Kinship Care benefits for 4 children noted at Finding # 2 but the agency received an anonymous tip indication that Petitioner and the mother of the children for whom Petitioner receives Kinship Care benefits were splitting Petitioner's Kinship benefits. This caused an investigation as to whether benefit eligibility criteria were still met.
4. The mother of the children note at Finding # 2 is [REDACTED]. She is an Army and Iraq war veteran. She also has another child of just under a year of age as of the discontinuance of Kinship benefits – it is not clear who cares for this child but it is not Petitioner.
5. The agency concluded that Petitioner was not eligible for continued Kinship Care for the children involved here; concluding that the placement is voluntary; they could reside with their mother who lives next door to Petitioner.
6. Petitioner does not have a guardianship in place for the 4 children.

### DISCUSSION

The Kinship Care benefit is a public assistance payment of \$232 per month per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaces the former Non-Legally Responsible Relative (NLRR) Aid to Families with Dependent Children (AFDC) payment. To be eligible for the payments, the relative must meet all of the conditions set forth in *Wis. Stat. §§ 48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6)*. Subsection (3m) concerns Children in Need of Protection or Services (CHIPS) and subsection (3n) concerns guardianship cases.

For a guardianship based Kinship Care application under statutory subsection (3n) the Wisconsin Administrative Code further requires that the Kinship Care applicant provide proof that they have been named as guardian under §48.977, *Stats.; Wis. Admin. Code, §DCF, 58.15*. In this case there is no guardianship so I cannot find that Petitioner is eligible to receive Kinship under guardianship provisions.

This decision must still decide whether Petitioner's case meets CHIPS based Kinship Care eligibility criteria. The Statutes require that:

...A county department and, in a county having a population of 500,000 or more, the department shall make payments in the amount of \$215 per month to a Kinship Care relative who is providing care and maintenance for a child if all of the following conditions are met:

1. The Kinship Care relative applies to the county department or department for payments under this subsection and the county department or department determines that there is a need for the child to be placed with the Kinship Care relative and that the placement with the Kinship Care relative is in the best interests of the child.
  2. The county department or department determines that the child meets one or more of the criteria specified in s. 48.13 or 938.13, that the child would be at risk of meeting one or more of those criteria if the child were to remain in his or her home or, if the child is 18 years of age or over, that the child would meet or be at risk of meeting one or more of those criteria as specified in this subdivision if the child were under 18 years of age.
- §48.57(3m)(a)2(am), Wis. Stats.*

The *Wisconsin Administrative Code*, at §DCF 58.10(1), describes the “need” for placement as follows:

- (a) The child needs the kinship living arrangement. The agency shall determine that the child needs the kinship living arrangement by determining at least one of the following:
1. The child's need for adequate food, shelter and clothing can be better met with the relative than with the child's parent or parents.
  2. The child's need to be free from physical, sexual or emotional injury, neglect or exploitation can be better met with the relative than with the child's parent or parents.
  3. The child's need to develop physically, mentally and emotionally to his or her potential can be better met with the relative than with the child's parent or parents.
  4. The child's need for a safe or permanent family can be better met with the relative than with the child's parent or parents.

It must also be noted that, in Decision No. KIN-40/51985, dated May 22, 2002, the Department's deputy secretary concluded that even when the assessor finds that one of the four grounds cited above are met, there still must be evidence that there is a risk to the child cited in Wis. Stat. §48.13 if the child were to live with a parent. Essentially that decision ties together the first two conditions cited in *Wis. Stat. §48.57(3m)(am)*, that there be a need for the placement and that the child be at risk of harm that could lead to a Child In Need of Protection or Services (CHIPS) case. It also confirms that at least one of the criteria in the list at *Wis. Stat. §48.13* must be satisfied.

Chapter 938 of the Statutes deals with juvenile justice issues and juveniles involved in delinquencies who also need protection or services; Chapter 48 is entitled 'Children's Code' and is the relevant chapter for this case. The statutory citation referenced above – *Wis. Stat. §48.13*, which provides for jurisdiction over children alleged to be in need of protection or services – is relevant here and provides as follows:

The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

- (1) Who is without a parent or guardian;
- (2) Who has been abandoned;
- (2m) Whose parent has relinquished custody of the child under s. 48.195 (1);
- (3) Who has been the victim of abuse, as defined in s. 48.02 (1)(a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another;
- (3m) Who is at substantial risk of becoming the victim of abuse, as defined in s. 48.02 (1)(a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;
- (4) Whose parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child;
- (5) Who has been placed for care or adoption in violation of law;
- (8) Who is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;
- (9) Who is at least age 12, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;
- (10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;

(10m) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;

(11) Who is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to ameliorate the symptoms;

(11m) Who is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or

(13) Who has not been immunized as required by s. 252.04 and not exempted under s. 252.04 (3).  
 §48.13, Wis. Stats.

In a nutshell, the placement must be in the best interests of the child and there must be need for the placement as demonstrated by evidence of the child being a CHIPS or JIPS child or the likelihood that the child would be such if living with a parent.

Petitioner testified that [REDACTED] has post traumatic stress issues and cannot care for the children involved here. She also told the agency that [REDACTED]'s other child - the baby - is not cared for by [REDACTED] but, rather, by [REDACTED]'s mother. The agency relies entirely on an anonymous tip and contradictory statements from VA staff. One VA staffer observed [REDACTED] caring of the children during her visits but another expressed concern about [REDACTED]'s mental state and the safety of children in her care.

I note that the standard of proof is preponderance and the Division of Hearings and Appeals cannot base findings on uncorroborated hearsay. Here the agency case is based on hearsay phone calls and/or emails from VA staff who did not testify. As such it is hearsay. Hearsay is admissible in administrative hearings. Wis. Stat. § 227.45(1). However, as the Wisconsin Supreme Court has stated, “[P]roperly admitted evidence may not necessarily constitute substantial evidence.” *Gehin v. Wisconsin Group Insurance Board*, 278 Wis. 2d 111, ¶ 52 (2005). In *Gehin*, the court held that uncorroborated medical records that were contradicted by the petitioner’s sworn testimony was not substantial evidence to support a decision to deny the petitioner coverage. *Id.* at ¶¶ 80-82. In short, I am barred from deciding a contested matter of fact on the basis of uncorroborated hearsay.

Given those factors, I am relying on the first hand testimony of Petitioner and concluding that there is a risk that the children meet the criteria for being children in need of protection or services.

### **CONCLUSIONS OF LAW**

The agency incorrectly discontinued Petitioner’s Kinship Care as the best available evidence is sufficient to indicate that the children for whom she receives the Kinship Care benefit meet the standards necessary for that benefit.

**THEREFORE, it is**

**ORDERED**

That the Petitioner’s Kinship Care benefits be reinstated from the date of cut off, going forward. The agency shall take all administrative steps necessary to complete this task within ten days of this decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

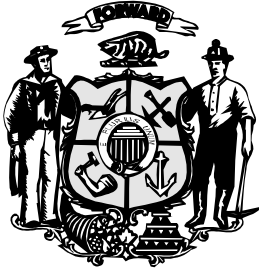
### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 2nd day of September, 2016

\s \_\_\_\_\_  
David D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 2, 2016.

Professional Services Group - PSG

DCF - Kinship Care

DCF - Kinship Care